

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF)
)
Manna Pro Products, LLC)
707 Spirit 40 Park Drive)
Suite 150)
Chesterfield, Missouri 63005)
)
Respondent)

Docket No. FIFRA-07-2008-0015

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region VII and Manna Pro Products LLC (Respondent) have agreed to a settlement of this action before filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b), 22.18(b)(2) and 22.18(b)(3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and 22.18(b)(3).

ALLEGATIONS

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l.
2. This Consent Agreement and Final Order (CAFO) serves as notice that EPA has reason to believe that Respondent has violated Section 12 of FIFRA, 7 U.S.C. § 136j.

Parties

3. The Complainant, by delegation from the Administrator of the EPA and the Regional Administrator, EPA, Region VII, is the Director of the Water, Wetlands, and Pesticides Division, EPA, Region VII.
4. The Respondent is Manna Pro Products, LLC, a pesticide producer with a facility located at 3158 North Fifth Street Traffic Way Kansas City, Kansas, 66115. The Respondent is and was at all times referred to in this Consent Agreement and Final Order, a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and a limited liability company qualified to do business in the state of Missouri.

Statutory and Regulatory Background

5. Section 12(a)(1)(E) of FIFRA states that it shall be unlawful for any person to distribute or sell to any person any pesticide which is adulterated or misbranded. 7 U.S.C. § 136j(a)(1)(E).

6. A pesticide is “misbranded” if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular. 7 U.S.C. § 136(q).

7. The term “to distribute or sell” means to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver. 7 U.S.C. § 136(gg).

Factual Allegations

8. Respondent, at all times relevant, operated a registered pesticide-producing establishment in Kansas City, Kansas, under EPA Establishment Number 55392-KS-001.

9. Respondent is the registrant for FLY B Gone Mineral Block for Cattle w/Rabon Oral Larvicide (FLY B Gone), bearing the EPA Registration Number 55392-3.

10. On February 26, 2007, EPA filed a Consent Agreement and Final Order citing Respondent for distribution or sale of a pesticide which is adulterated or misbranded. Respondent was cited for the distribution or sale of FLY B Gone product which did not display all of the label requirements.

11. On October 10, 2007, a representative of the Kansas Department of Agriculture (KDA) conducted a for cause inspection at the Feldman’s Farm and Home Center store located in Bonner Springs, Kansas. The KDA representative collected photographic documentation and records of sales of FLY B Gone.

12. On October 24, 2007, representatives of KDA conducted a for cause inspection at Respondent’s manufacturing plant located in Kansas City, Kansas. The KDA representatives collected photographic documentation of FLY B Gone held for sale.

13. The inspections revealed that the FLY B Gone did not display all of the label requirements. Specifically, the following label requirements were not visible: Precautionary Statements, First Aid Information, Environmental Hazards Statement, Personal Protection Equipment Statement, User Safety Recommendations, Note To Physician, Directions For Use, and Storage and Disposal Information.

14. During the October 10, 2007, inspection, KDA issued a Federal Stop Sale, Use, or Removal Orders (SSURO) on the FLY B Gone product held at the Feldman’s Farm and Home

Center. During the October 24, 2007, inspection, KDA issued a Federal SSURO on the FLY B Gone product held at Respondent's manufacturing plant. Respondent reclaimed the FLY B Gone from Feldman's Farm and Home Center and adjusted the packaging so that all label requirements were visible. On November 21, 2007, EPA vacated the SSURO on the FLY B Gone held at Respondent's manufacturing plant, and on November 29, 2007, vacated the SSURO on the FLY B Gone previously held at Feldman's Farm and Home Center.

VIOLATIONS

15. The Complainant hereby states and alleges that Respondent has violated FIFRA and federal regulations promulgated thereunder, as follows:

Count 1

16. Complainant hereby incorporates the allegations contained in paragraphs 1 through 15 above, as if fully set forth herein.

17. A sales receipt collected during the October 24, 2007, inspection at Respondent's manufacturing facility shows that FLY B Gone was sold and shipped to Feldman's Farm and Ranch Center in Blue Springs, Missouri on July 25, 2007. That shipment was sent to Feldman's Farm and Home Center in Bonner Springs, Kansas.

18. Photographic documentation collected during the October 10, 2007, inspection at Feldman's Farm and Home Center show the label for FLY B Gone did not display all of the label requirements. Specifically, the following label requirements were not visible: Precautionary Statements, First Aid Information, Environmental Hazards Statement, Personal Protection Equipment Statement, User Safety Recommendations, Note To Physician, Directions For Use, and Storage and Disposal Information.

19. Respondent violated Section 12(a)(1)(E) of FIFRA by distributing or selling a misbranded pesticide. 7 U.S.C. § 136j(a)(1)(E).

Count 2

20. Complainant hereby incorporates the allegations contained in paragraphs 1 through 15 above, as if fully set forth herein.

21. Respondent acknowledged during the October 24, 2007, inspection at Respondents manufacturing facility that FLY B Gone was packaged, labeled, and released for shipment to customers. The KDA inspector observed inventory being held for sale or distribution at Respondent's manufacturing facility.

22. Photographic documentation collected during the October 24, 2007, inspection show the label for FLY B Gone did not display all of the label requirements. Specifically, the following label requirements were not visible: Precautionary Statements, First Aid Information, Environmental Hazards Statement, Personal Protection Equipment Statement, User Safety Recommendations, Note To Physician, Directions For Use, and Storage and Disposal Information.

23. Respondent violated Section 12(a)(1)(E) of FIFRA by holding for sale or distribution a misbranded pesticide. 7 U.S.C. § 136j(a)(1)(E).

CONSENT AGREEMENT

It is hereby agreed and accepted by Respondent that:

1. Respondent and EPA agree to the terms of this CAFO and Respondent agrees to comply with the terms of the Final Order portion of this CAFO.
2. Respondent admits the jurisdictional allegations of this CAFO and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order set forth below.
3. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this CAFO.
4. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.
5. Respondent and Complainant agree to conciliate the matters set forth in this CAFO without the necessity of a formal hearing and to bear their respective costs and attorney's fees.
6. This CAFO addresses all civil administrative claims for the FIFRA violations identified above. Complainant reserves the right to take any enforcement action with respect to any other violations of FIFRA or any other applicable law.
7. Nothing contained in the Final Order portion of this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.
8. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

9. Respondent certifies by signing this CAFO that, to its knowledge, it is presently in compliance with FIFRA, 7 U.S.C. § 136 *et. seq.* and all regulations promulgated thereunder.

10. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a penalty of Nine Thousand Six Hundred Fifty Four Dollars and Thirty-Two Cents (\$ 9,654.32) as set forth in Paragraph 1 of the Final Order.

11. The effect of settlement described in paragraph 10 above is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 9 above.

12. Nothing in this Consent Agreement shall be construed as a release from any other action under any law and/or regulation administered by the U. S. Environmental Protection Agency. Nothing contained in the Final Order portion of this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

13. Failure to pay the assessed penalty may result in the referral of this matter to the United States Department of Justice for collection. If payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

FINAL ORDER

Pursuant to Section 14 of FIFRA, as amended, 7 U.S.C. § 136~~l~~, and according to the terms of the Consent Agreement set forth above, IT IS HEREBY ORDERED THAT:

1. Respondent, in settlement of the allegations set forth above, shall pay by cashier or certified check, a mitigated civil penalty, for the violations cited herein, in the amount of Nine Thousand Three Hundred Sixty Dollars (\$ 9,360.00), plus interest of Two Hundred Ninety Four Dollars and Thirty-Two Cents (\$ 294.32) over a period of one (1) year for a total payment of Nine Thousand Six Hundred Fifty Four Dollars and Thirty-Two Cents (\$ 9,654.32). The total civil penalty of \$ 9,654.32 shall be paid in four (4) quarterly payments of Two Thousand Four Hundred Thirteen Dollars and Fifty-Eight Cents (\$ 2,413.58) each. The first payment must be received at the address below on or before thirty (30) days after the effective date of this CAFO. Each succeeding payment will be due ninety (90) days after the previous payment.

2. Payment of the penalty shall be by cashier or certified check which shall reference Docket Number FIFRA-07-2008-0015, and made payable to "Treasurer, United States of America" and remitted to:

United States Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000.

3. A copy of the check shall simultaneously be sent to the following:

Kelley Catlin
Office of Regional Counsel
United States Environmental Protection Agency
Region VII
901 North 5th Street
Kansas City, Kansas 66101

and

Kathy Robinson
Regional Hearing Clerk
United States Environmental Protection Agency
Region VII
901 North 5th Street
Kansas City, Kansas 66101

4. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CAFO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

5. The effective date of this Order shall be the date on which it is signed by the Regional Judicial Officer.

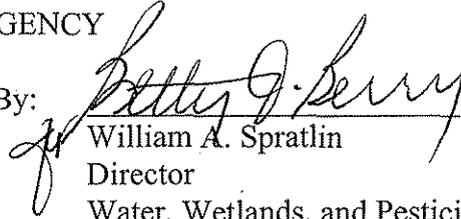
6. This executed CAFO shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 901 North 5th Street, Kansas City, Kansas, 66101.

COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

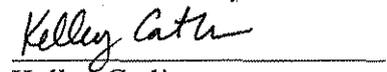
Date: 04/04/08

By:


William A. Spratlin
Director
Water, Wetlands, and Pesticides Division

Date: 4/1/08

By:


Kelley Catlin
Assistant Regional Counsel

RESPONDENT:

Manna Pro Products, LLC

Date: 3/25/08

By: Thomas A. Altweres

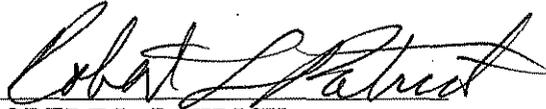
Printed Name: Thomas A. Altweres

Title: SR. VP PRODUCT Supply

IT IS SO ORDERED. This Order shall become effective immediately.

Date:

April 4, 2008



ROBERT L. PATRICK
Regional Judicial Officer
U.S. Environmental Protection Agency
Region VII

IN THE MATTER OF Manna Prop Products, LLC, Respondent
Docket No. FIFRA-07-2008-0015

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Kelley Catlin
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Manna Pro Products, LLC
Thomas A. Altwies
Senior VP Product Supply
707 Spirit 40 Park Drive
Suite 150
Chesterfield, Missouri 63005

Dated: 4/7/08


Kathy Robinson
Kathy Robinson
Hearing Clerk, Region 7